

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Lifeline and Link Up Reform and
Modernization

TracFone Petition for Rulemaking and
Interim Relief to Allow Lifeline
Subscribers to Establish Usage of Lifeline
Service by Sending Text Messages

WC Docket No. 11-42

**REPLY COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF OREGON**

The Public Utility Commission of Oregon ("OPUC"), pursuant to the Public Notice released on November 3, 2014 (DA 14-1591), hereby respectfully submits its reply comments on the Petition for Rulemaking and for Interim Relief filed by TracFone Wireless, Inc. on October 1, 2014 ("TracFone Petition"), in the above-captioned proceeding.

TracFone requests that the Federal Communications Commission ("FCC") amend section 54.407(c)(2) of its regulations to allow Lifeline subscribers to establish usage of Lifeline service by sending and receiving text messages. The FCC adopted this rule as part of the Lifeline Reform Order (12-11) to reduce waste, fraud, and abuse by ensuring that low-income Lifeline subscribers actually use the supported service.¹ Furthermore, the FCC explained that it did not include sending or receiving a text message in the list of consumer usage requirements because "text messaging is not a

¹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, *et. al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶ 257 (2012) ("Lifeline Reform Order").

supported service.”² The supported services are specified in section 54.101(a) and do not include text messaging. To accept text message as usage, the FCC would have to change the definition of supported services in its regulations. The OPUC urges the FCC to modify or clarify the definition of supported services if it decides to grant the TracFone Petition.

If the FCC classifies text messaging as a supported service or decides that text messages can be considered as “usage” for purposes of section 54.407(c)(2), the OPUC urges the FCC to specify that only **outgoing** (emphasis added) texts qualify as usage by a consumer. For purposes of determining usage, only active customer communications should be considered, as in the current rule. Although answering an incoming call qualifies as usage under the rule, mere receipt of a text message is not indicative of the customer having accessed the text message.³ Like a voicemail message, which doesn’t qualify as usage under the current rule, the text could be left unopened indefinitely or for long periods of time. Also, TracFone notes that the FCC allows Eligible Telecommunications Carriers (“ETCs”) and Lifeline subscribers to communicate via text message for annual recertification purposes.⁴ However, annual recertification is not the same as usage. The FCC requires ETCs (or state agencies) to verify each Lifeline subscriber’s compliance with the FCC’s Lifeline eligibility rules on an annual basis.⁵ Therefore, the OPUC recommends that, if the FCC permits texting as usage, qualifying usage be limited to an outbound text message and inbound text

² See *Lifeline Reform Order*, note 709.

³ Unless the Eligible Telecommunications Carrier can determine whether the consumer has actually accessed the text message, the OPUC does not recommend that the FCC consider incoming text messages as qualifying usage.

⁴ See *TracFone Wireless, Inc. Petition for Rulemaking and For Interim Relief*, WC Docket No. 11-42 (filed October 1, 2014) at 7 and note 13.

⁵ See *Lifeline Reform Order*, ¶ 111.

messages be prohibited as a form of qualifying usage. This action ensures that non-usage would not be circumvented by promotional, subscription, or spam-based text messages for which there is no consumer interaction.

The OPUC agrees that text messaging may be an important means of communication for persons with disabilities. The OPUC recommends that the FCC establish an exceptions process for ETCs in which individuals with disabilities can establish usage based on outgoing text messages, until it can decide the issue of whether or not texting is a supported service from the federal universal service fund.⁶

Respectfully submitted,

THE PUBLIC UTILITY COMMISSION
OF OREGON



Susan Ackerman
Chair

Stephen Bloom
Commissioner

John Savage
Commissioner

⁶ The greater outstanding issue is the inclusion of text messages in the free Lifeline service offerings and whether ETCs should be reimbursed from the federal universal service fund for text messages.